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5 **ATTORNEY FOR PLAINTIFF**

6
7
8 IN THE UNITED STATES DISTRICT COURT
9
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 ALI BAALOUACH,

12 Plaintiff

13)
14) Case No.: 3:07-cv-05433-JSW
15)
16) Judge: Hon. Jeferey S. White
17) [Case Referred to Magistrate Judge
18) Joseph C. Spero for Report and
19) Recommendation on Default Judgment]
20)

21 vs.

22 MEHDI NAFAI,

23 DORIS ALICIA CORDOVA,

24 SUMMIT MORTGAGE,

25 REALTY MORTGAGE, LLC,

Doe 1 through Doe 10,

Defendants

) **DECLARATION OF ALI**
) **BAALOUACH SUPPORTING ALI**
) **BAALOUACH'S MOTION FOR**
) **DEFAULT JUDGMENT AS TO**
) **DORIS ALICIA CORDOVA AND**
) **SUMMIT MORTGAGE**
) **CORPORATION**

1 The Plaintiff, Ali Baalouach, declares:

2 1. I am Ali Baalouach.

3 2. All the facts and statements made below are within my personal knowledge; anything I did
4 not understand I asked questions about and had explanations given to me in English that
5 were then translated for me into Arabic so that I could understand fully the facts and
6 technical points made below. If called to testify I could, with the aid of a translator,
7 testify competently to them.

8 3. This declaration has been translated to me in Arabic:

9 وهذا هو ما أعنيه : باللغة الإنجليزية وتحت
10 طائلة القانون يسمونها بـ "الشهادة" وقد
11 ترجمت لي من اللغة الغربية.

12 4. I have suffered \$200,629.82 in actual damages as a result of the Defendant Nafai,
13 Defendant Doris Alicia Cordova and Defendant Summit Mortgage's ("Broker-
14 Defendants") actions and as detailed in the fact section and as supported by Exhibits B-I.
15 Which by this reference are incorporated herein [*Not reprinted herein*].

16 5. Exhibit B is a true and correct copy of closing documents from my purchase of my home
17 at 68 Cayuga Avenue, San Francisco, California 94112 ("Property") showing my
18 \$83,000.00 down payment.

19 6. Exhibit C is a set of true and correct copies of my bank statements and a certified check
20 detailing my \$79,618.47 in loan payments since I purchased the Property.

21 7. Exhibit D is a set of true and correct copies of the HUD-1 Settlement Statement, City and
22 County of SF Secured Tax Roll, and a Title Report for the Property dated July 27, 2007
23 detailing my \$30,694.24 in property tax payments since I purchased the Property.

24 8. Exhibit E is a set of true and correct copies of my bank and credit card statements and San
25 Francisco Public Utility Commission Billing Register detailing my \$760.16 in payments
for water and sewer charges since I purchased the property.

9. Exhibit F is a master spreadsheet detailing my total damages incurred as shown in my
other Exhibits.

10. Exhibit G is a set of true and correct copies of my bank and credit card statements
1 detailing my payments to Home Depot, Lowes and Discount Building Supply for my
2 \$6,556.95 in repairs for my Property.

3 11. Exhibit H is a true and correct copy of the Purchase and Sale Agreement dated August 9,
2007 for my sale of my Property to Ivan Castro and a true and correct copy of
4 Countrywide's written approval of this sale on March 18th, 2008.

5 12. Exhibit I is a true and correct copy of the, "Notice of Trustee Sale" with a stated sale date
of February 19, 2008 at 2:00 p.m. that had previously been posted on my front door.

6 **FACTS**

7 1 1. I speak Moroccan "Berber" as my first language and Arabic as my second language.

8 2 2. On or about September, 2006 I discussed the possibility of refinancing the Property
9 with Mehdi Nafai (Defendant Nafai).

10 3 3. All conversations between me and Defendant Nafai regarding the refinancing of the
11 Property were conducted in Arabic.

12 4 4. Defendant Nafai was acting as agent and/or employee of Defendant Summit Mortgage
13 and Defendant Doris Alicia Cordova.

14 5 5. My only information and communication, prior to the date of loan closing, regarding
15 the refinancing of the Property came from information supplied by Defendant Nafai
16 either in person or by telephone. Defendant Nafai supplied all information concerning
17 refinancing the Property to me in Arabic.

18 6 6. Defendant Nafai agreed to serve as my agent and to provide me with mortgage
19 brokerage services in connection with my desire to refinance the existing loans on my
Property. In fact, Defendant Nafai represented to me that the Broker-Defendants
would assist me in obtaining a good loan at a low interest rate.

20 7 7. Defendant Nafai represented to me that the total fee the Defendant Summit Mortgage,
21 Defendant Doris Alicia Cordova and Defendant Nafai would receive for the mortgage
22 brokerage services in connection with the refinance of the Property would not exceed a
total of \$3,500.00 (three thousand five hundred dollars).

23 8 8. Defendant Nafai represented to me that the total fee the Defendant Summit Mortgage
24 Company, Defendant Doris Alicia Cordova and Defendant Nafai would receive for the
mortgage brokerage services in connection with the refinance of the Property would be
paid entirely by the lender and that I would NOT bear any of the cost of the fee.

1 9. Defendant Nafai provided to me and defendants Doris Alicia Cordova and Summit
2 Mortgage Company loan application information and paperwork.

3 10. The existing first loan on the Property was secured by a Deed of Trust with EMC
4 Corporation as the beneficiary. The existing second loan on the Property was secured
5 by a Deed of Trust with Greenpoint Mortgage as the beneficiary.

6 11. The loans supplied for the refinance were brokered by Defendant Summit Mortgage
7 and Defendant Doris Alicia Cordova and funded by Defendant Realty Mortgage.
8 Funds from the refinance were paid out to EMC Corporation in satisfaction of the First
9 Trust Deed secured by the Property in the amount of \$687,315.53. Funds were paid
10 out to Greenpoint Mortgage in satisfaction of the Second Trust Deed secured by the
11 Property in the amount of \$85,372.48.

12 12. On or about October 26th, 2006, Defendant Summit Mortgage, Defendant Doris Alicia
13 Cordova, Defendant Nafai and Defendant Realty Mortgage conducted a loan closing to
14 consummate its residential loan to me.

15 13. The loan closing was conducted at 3000 Clayton Road, Concord, California 94519.

16 14. The proceeds of the two, new loans were to refinance the two, existing deeds of trust
17 secured by my Property.

18 15. The two loans were secured against title to my principal dwelling, the Property, by two
19 Separate Deeds of Trust recorded with the San Francisco Assessor-Recorder. The First
20 Deed of Trust is recorded as DOC-2006-I278024-00, Acct 4-Old Republic Title
21 Company, Thursday, November 2nd, 2006, Reel J259 Image 0160. The Second Deed
22 of Trust is recorded with the San Francisco Assessor-Recorder, as DOC-2006-
23 I278025-00, Acct 4-Old Republic Title Company, Thursday, November 2nd, 2006,
24 Reel J259 Image 0161.

25 16. On or about November 1, 2006, I received a "HUD-1" Settlement Statement
("Settlement Statement"), dated November 1, 2006.

17 17. A true and accurate copy of the "Settlement Statement" is attached to this Declaration
as Exhibit J, and by this reference is incorporated herein [*not reprinted herein*].

18 18. Among the various fees charged in connection with my loan included an "Appraisal
19 Fee" of \$350, "Tax Service Fee" of \$65, "Underwriting Fee" of \$775, a "Flood
20 Certification Fee" of \$18, a "Wire Transfer Fee" of \$25, an "Appraisal Review" of
21 \$550, an "Underwriting Fee-2nd Ln" of \$200, a "Broker Admin Fee-2nd Ln" of \$550, a
22 "Processing Fee-2nd Ln" of \$1,025, a "Flood Certification Fee-2n [sic] Ln" of \$18, a
23 "Wire Fee-2nd Ln" of \$25, "Recording Fees" of \$123

1 19. Furthermore, the Settlement Statement provides on line 811 as follows: "REALTY
2 MORTGAGE, LLC SHALL PAY A YIELD SPREAD PREMIUM OF \$18,281.25 TO
3 SUMMIT MORTGAGE."

4 20. Defendant Realty Mortgage in fact paid this fee to Defendant Doris Alicia Cordova
5 and Defendant Summit Mortgage Company in exchange for those defendants' referral
6 of me to Defendant Realty Mortgage for the purpose of making a "federally related
7 mortgage loan" to me.

8 21. Defendant Summit Mortgage Corporation and Defendant Doris Alicia Cordova's
9 receipt of this steering fee increased my settlement costs. Defendant Summit
10 Mortgage and Defendant Doris Alicia Cordova arranged for me to receive a loan at a
11 higher interest rate and with more oppressive loan terms, including a pre-payment
12 penalty than I could have otherwise received so that Defendant Doris Alicia Cordova
13 and Defendant Summit Mortgage Corporation could receive the "yield spread
14 premium" payment.

15 22. This fee for steering was paid indirectly by me through a higher interest rate, and
16 inferior loan terms than that which I could have otherwise received.

17 23. Defendant Doris Alicia Cordova and Summit Mortgage Corporation received this fee
18 pursuant to an agreement or understanding that business incident to or a part of a real
19 estate "settlement service" involving a "federally related mortgage loan" would be
20 referred by Defendant Doris Alicia Cordova and Summit Mortgage Corporation to
21 Defendant Realty Mortgage.

22 24. At all times relevant herein, I had no understanding and received no explanation of the
23 fact that Defendant Doris Alicia Cordova and Defendant Summit Mortgage received
24 this "yield spread premium" fee as a payment for Defendant Doris Alicia Cordova and
25 Defendant Summit Mortgage steering me into a loan with a higher interest rate and
more onerous loan terms.

26 25. At all times relevant herein, I had no understanding and received no explanation of the
27 fact that this "yield spread premium" fee was paid indirectly by me through a higher
interest rate and more oppressive loan terms than were otherwise available to me.

28 26. Neither Defendant Doris Alicia Cordova, nor Defendant Summit Mortgage nor
29 Defendant Nafai disclosed to me that the payment of this "yield spread premium" fee
30 to Defendants Summit Mortgage and Doris Alicia Cordova constituted a kickback or
referral fee at or prior to the time that these Defendants made the referral to Defendant
31 Realty Mortgage in connection with Defendant Realty Mortgage funding my loan.

32 27. Instead, the fee appeared on the Settlement Statement listed solely as "yield spread
33 premium" without prior, contemporaneous or future explanation in Arabic (or in any
34 language) as to its meaning.

1 28. I was not advised in a manner that I was reasonably capable of understanding that there
2 was a pre-payment penalty on the new loans.

3 29. I was not advised in a manner that I was reasonably capable of understanding that the
4 First Trust Deed had a negative amortization component.

5 30. I was not advised in a manner that I was reasonably capable of understanding that if I
6 made the minimum loan payment that the loan balance would actually grow larger
7 rather than smaller over time.

8 31. The Property is currently in default and a Trustee Sale that was originally scheduled
9 for February 19th, 2008 has been rescheduled twice since February 19th, 2008. As of
10 February 4, 2008 the outstanding loan balances on the two loans secured by the
11 Property was approximately \$948,160.28.

12 32. I am currently attempting to sell the Property and a contract for sale, dated, August 9th,
13 2007 has been entered with a buyer for a sales price of \$860,000. The current loan
14 servicing company, Countrywide, has, twice since August 9th, 2007, stated that they
15 were rejecting the sale and then reversed their decision and stated that they were
16 reopening the sale and reviewing the terms.

17 33. On January 31, 2008, Countrywide stated that the prospect of the sale going through
18 was good and that they would have an answer in 7 to 10 business days.

19 34. On March 14, 2008 Countrywide stated that they had approved the short sale and that
20 they were faxing and mailing an approval letter granting an approval for the short-sale.

21 35. On March 18, 2008 Countrywide faxed and mailed out a letter granting approval for
22 the short-sale.

23 36. On April 15th, 2008 Countrywide stated that Countrywide needed more time to process
24 the short-sale because Countrywide had assigned a different work-out negotiator to the
25 first loan and a different negotiator to the second loan secured by the Property.

37. On May 21, 2008 Countrywide stated that they needed to do another appraisal on the
home (this is the third appraisal Countrywide has done on the home) before they could
finalize the short-sale.

38. Countrywide also stated that the foreclosure sale date had been postponed to allow for
the sale to go through.

39. When either the short-sale or the foreclosure sale goes through, I will have suffered
\$200,629.82 in losses in payments for my Property. I have therefore incurred
\$200,629.82 in actual damages which I seek to recover from Defendant Doris Alicia
Cordova and Defendant Summit Mortgage .

I declare under the penalty of perjury under the laws of the State of California that the above and foregoing is true and correct. Executed this 23 day of May, 2008 at San Francisco, California.

By: 

Ali Baalouach in "English"

By: 

Ali Baalouch in "Arabic"

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CERTIFICATE OF SERVICE
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7 I hereby certify that on May 26th, 2008, I electronically transmitted the attached document to the
8 Clerk of Court using the ECF System for filing.
9

10 s/Scott A. Flaxman
11 Scott A. Flaxman
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